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Testimony In Opposition To The Board of Physical Therapy Examiners' Proposal To Expand The Current Scope Of Practice For Physical Therapists Without Authorization From The Montana Legislature

Request: The Montana Association of Acupuncture and Oriental Medicine ("MAAOM") respectfully requests that the Economic Affairs Interim Committee file a new objection to the dry needling rule in MAR Notice No. 24-177-32 pursuant to Montana Code Annotated § 2-4-306(4)(c) on the grounds that the Montana Legislature has never authorized physical therapists to use solid needles within their scope of practice.

- To protect the health and welfare of all Montanans, the 1974 Montana Legislature determined it was necessary to regulate the invasive use of solid needles in treating injuries. *See* Mont. Code Ann. §§ 37-13-101, *et seq.*
- The Montana Legislature expressly authorized acupuncturists to use solid needles to treat, diagnose, or correct human injuries. *See* Mont. Code Ann. § 37-13-103.
- A 1999 Attorney General opinion determined that there are two classes of individuals authorized to use solid needles to treat injuries: (1) acupuncturists; and (2) individuals engaging in "the practice of medicine." 48 Op. Att'y Gen. No. 7.
 - The Montana Legislature has forbidden physical therapists from practicing medicine. Mont. Code Ann. § 37-11-103 (**Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine**”).
- Conversely, the Montana Legislature has never authorized physical therapists to use needles in any capacity. *See* Mont. Code Ann. §§ 37-11-101 to 37-11-322.
- EAIC lead staffer Pat Murdo issued a memo that made two key findings:
 - The proposed rule "would be the **first** rule that allows physical therapists to do an invasive treatment." Murdo memo, p. 3 (emphasis added).
 - It is "questionable whether the Legislature intended" to allow physical therapists to perform invasive treatments. Murdo memo, p. 3.
- An executive agency cannot act without authorization from the Montana Legislature. Mont. Const. Art. III, § 1; *see also* Mont. Code Ann. § 2-4-305(5).